

APPENDIX 8

**Attorney General/Commissioner of Education
Joint Memorandum to County Superintendents of Schools
and County Prosecutors
Concerning "Sharing Juvenile Delinquency Information
with Schools"
(1995)**



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

DEBORAH T. PORITZ
ATTORNEY GENERAL

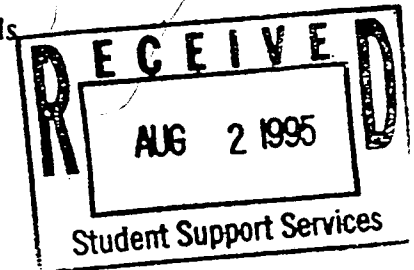
MEMORANDUM

To: County Superintendents of Schools
County Prosecutors

From: Deborah T. Poritz, Attorney General *QAP*
Leo Klagholz, Commissioner, Department of Education *lt*

Subject: Sharing Juvenile Delinquency Information with Schools

Date: July 28, 1995



Introduction

Purpose of this Memorandum

This memorandum explains the provisions of New Jersey's revised juvenile delinquency confidentiality law (*P.L. 1994, Ch. 56*) that govern sharing delinquency information with schools. It also provides a suggested format and instructions for sharing delinquency information. It is expected that prosecutors will develop local procedures appropriate for their counties and may use other formats for notification, such as computer generated notices, if they are better suited to local needs.

Revision of Juvenile Code Confidentiality Provisions

On June 29, 1994, New Jersey's juvenile delinquency confidentiality law was amended (*P.L. 1994, Ch. 56*, copy attached). Among other changes, the law facilitates the sharing of law enforcement information with schools.

Regulations

Although the law (*P.L. 1994, Ch. 56*) requires that education rules and regulations be promulgated regarding this information, a review of regulations governing pupil records has indicated that the maintenance of this information is covered by existing regulations. This section will be reviewed further as part of the comprehensive code review process being undertaken by the Department of Education.

Sharing Law Enforcement Information with Schools

Information Disclosed

The act provides for three categories of disclosure to schools. The categories are:

1. Permissive Disclosure During Investigation (N.J.S.A. 2A:4A-60(e));
2. Disclosure Following Charge at Principal's Request (N.J.S.A. 2A:4A-60(c)(3));
3. Required Disclosure Following Charge (N.J.S.A. 2A:4A-60(d)).

These categories are described below.

Permissive Disclosure During Investigation (N.J.S.A. 2A:4A-60(e))

The law permits law enforcement or prosecuting agencies to share information regarding juveniles under investigation, when, in their judgment, the information may be useful in maintaining order. This information may also be shared by the principal with appropriate staff, but since it relates to investigations only and no charges have been filed, the statute prohibits this information from being maintained. Since the statute prohibits school officials from maintaining a record of this information, it should be provided orally by law enforcement officials. Providing this information orally, rather than in writing, will help avoid inadvertent retention or disclosure of such information.

Disclosure Following Charge at Principal's Request (N.J.S.A. 2A:4A-60(c)(3))

The law contains provisions allowing principals to request information regarding juvenile delinquency charges filed against a student enrolled in their school. These requests may either be done on a case by case basis, or according to procedures that could be agreed to as part of the *Statewide Memorandum of Agreement between Education and Law Enforcement*. For example, a school district and local police might agree to automatically share this information regarding all students enrolled in the district.

Required Disclosure Following Charge (N.J.S.A. 2A:4A-60(d))

The law also *requires* that law enforcement or prosecuting agencies advise the principal of the school where the student is enrolled when:

- The offense occurred on school property or a school bus, occurred at a school-sponsored function or was committed against an employee or official of the school;
- The juvenile was taken into custody as a result of information or evidence provided by school officials; or

- The offense resulted in:
 - death or serious bodily injury or involved an attempt or conspiracy to cause death or serious bodily injury;
 - the unlawful use or possession of a firearm or other weapon;
 - the unlawful manufacture, distribution or possession with intent to distribute a controlled dangerous substance or controlled substance analog;
 - the intimidation of an individual or group of individuals because of race, color, religion, sexual orientation or ethnicity;
 - a crime of the first or second degree.

Sharing Information Within Schools; Records

Sharing Delinquency Information within a School

The act provides for sharing information within a school once the school has received delinquency information regarding a pupil. The requirements of the act for the three categories of disclosure are discussed below. The last two categories are discussed together since the provisions regarding sharing of this information within a school are the same.

Permissive Disclosure During Investigation (N.J.S.A. 2A:4A-60(e))

Information regarding investigations may also be shared by the principal with appropriate staff, but since it relates to investigations only and no charges have been filed, the statute prohibits this information from being maintained. Since the statute prohibits school officials from maintaining a record of this information, it should be provided to staff orally by the principal. Providing this information orally, rather than in writing, will help avoid inadvertent retention or disclosure of such information. If information regarding an investigation is received in writing by a school, the written notice may not be included in the pupil's record and must be destroyed.

Permissive Or Required Disclosure Following Charge (N.J.S.A. 2A:4A-60(c)(3) or N.J.S.A. 2A:4A-60(d))

For both permissive and required disclosures following a charge of delinquency, the law allows principals to share such information with members of the staff and faculty they deem appropriate for maintaining order or for planning appropriate programs for a specific student. It is important to note that when this information is shared, it becomes part of the pupil's record and is subject to the maintenance and access provisions of N.J.A.C. 6:3-6.1. When the information is not shared, it may be maintained solely as a memory aid by the principal. It is not subject to the provisions of N.J.A.C. 6:3-6.1 since it does not meet the definition of a pupil record under these circumstances.

Additional Information

Suggested Format for Notification

Attached is a suggested format for notification that may be used by law enforcement for providing delinquency information to schools. The suggested format may be used to provide the information, or to confirm a verbal exchange with school personnel. Instructions for the use of the form are also included. To ensure that educators and police are aware of these changes, prosecutors and county superintendents are asked to share this information with local superintendents, principals, chiefs of police and other appropriate law enforcement officials.

Progress Report

It is anticipated that prosecutors will develop local notification procedures to fit the needs of their counties. In order for the Attorney General's Education and Law Enforcement Working Group to assess the implementation of the law, it is requested that prosecutors and county superintendents submit a joint report to Terrence Farley, Director, Division of Criminal Justice, regarding the distribution and discussion of this information and any local procedures that have been developed. The report should be submitted by November 1, 1995. Please send a copy of that report to the Department of Education, attention of Dr. Peter Contini, Assistant Commissioner, Division of Field Services.

"Megan's Law" Guidelines

Nothing in this memorandum supersedes the more specific "Megan's Law" guidelines that govern notification procedures regarding juvenile sex offenders.

Questions Regarding this Memorandum

We appreciate your attention to this issue. If you have any questions, please contact either:

Deputy Attorney General Thomas Fisk
Juvenile Justice Bureau,
Division of Criminal Justice
Department of Law and Public Safety
CN-085
Trenton, N.J. 08625
(609) 984-2091

or, Jennifer Seeland, Director
Office of Interagency Initiatives
Division of Student Services
Department of Education
CN-500
Trenton, N.J. 08625
(609) 292-5935

/ww
Attachments

**Instructions for the Suggested Format
For Juvenile Delinquency Law Enforcement/School
Exchange Of Information**

This suggested format is designed for transmitting information regarding juvenile delinquency charges, adjudications, or dispositions to principals of schools in which the juveniles is enrolled. **This form should not be used to transmit information regarding juveniles under investigation against whom no charges have yet been filed.** Since the statute prohibits school officials from maintaining a record of this information regarding investigations, it should be provided verbally by law enforcement officials. Providing this information verbally, rather than in writing, will help avoid inadvertent retention or disclosure of such information by school officials.

The following guidelines should be followed when completing this form.

1. The form should be mailed or faxed with an indication that this information is confidential for the principal. While the principal may decide to share this information with appropriate staff pursuant to the law, sharing of this information is not automatic. Mail or faxes not sent with a confidential cover sheet may be inadvertently disclosed.
2. At least one box should be checked under either Section A or Section B to indicate the authority for this disclosure.
3. One box should be checked in Section C to indicate the current stage of the juvenile proceedings.
4. Section D should be filled out with brief narrative descriptions. Criminal code charge numbers, although they may be included, are not sufficient by themselves to inform school personnel of the nature of the offenses. If an adjudication has taken place the outcome should be included. Special care should be taken to clearly indicate that a juvenile has not been found delinquent if there has been either an adjudication at which the juvenile was found not delinquent, or if the charges were dismissed. If a disposition has been entered the disposition should be described briefly. Diversion to programs such as Juvenile Conference Committees should be considered a disposition for the purposes of this form. Please note that when juvenile cases are diverted, the charges are usually dismissed upon successful completion of the diversion. The school should be notified that charges will be dismissed if the diversion is completed successfully.

Suggested Format For Juvenile Delinquency Law Enforcement/School Exchange Of Information

To: _____

Date: _____

From: _____

Telephone #: _____

Full Name of Juvenile: _____

A. Permissive Disclosure Following Charge (N.J.S.A. 2A:4A-60(c)(3))

- ☐ Check this box if this is a requested disclosure. If requested by the principal, you may confidentially disclose a juvenile's identity to the principal of the school where the juvenile is enrolled as well as to any staff members designated by the principal. Permissive disclosure can apply to any offense if the information is requested.

B. Required Disclosure Following Charge (N.J.S.A. 2A:4A-60(d))

- ☐ Check this box if this is a required disclosure. Disclosure of a juvenile's identity to the principal of a school where the juvenile is enrolled is required under any of the following circumstances. Check all categories that apply.

- ☐ The offense occurred on school property.
- ☐ The offense occurred on a school bus.
- ☐ The offense was committed against a school employee or official.
- ☐ The juvenile was taken into custody as a result of information or evidence provided by school officials.
- ☐ The offense resulted in death or serious bodily injury.
- ☐ The offense involved an attempt or conspiracy to cause death or serious bodily injury.
- ☐ The offense involved unlawful use or possession of a firearm or other weapon.
- ☐ The offense involved unlawful manufacture, distribution or possession with intent to distribute a controlled dangerous substance or analog.
- ☐ The offense was committed by a juvenile who intended to intimidate an individual or group because of race, color, religion, sexual orientation or ethnicity.
- ☐ The offense, if committed by an adult, would constitute a crime of the first or second degree.

C. Please indicate at which stage of the juvenile proceedings the information is being exchanged.

- ☐ Charge(s) ☐ Adjudication ☐ Disposition

D. Describe below the charges pending against this juvenile, and if this information is being provided at the time of adjudication or disposition, describe the result of the adjudication and/or disposition.

charges

adjudication

disposition

[SECOND REPRINT]
SENATE, No. 893

STATE OF NEW JERSEY

INTRODUCED MARCH 21, 1994

By Senators BENNETT, GORMLEY, Cafiero,
McGreevey and Assemblyman Catania

AN ACT concerning access to information related to
juvenile justice proceedings, amending P.L.1982, c.79,
R.S.53:1-15 and P.L.1985, c.69 and supplementing Title
18A of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the
State of New Jersey:

1. Section 1 of P.L.1982, c.79 (C.2A:4A-60) is amended
to read as follows:

1. Disclosure of juvenile information; penalties for
disclosure.

a. Social, medical, psychological, legal and other
records of the court and probation department, and
records of law enforcement agencies, pertaining to
juveniles charged as a delinquent or found to be part of
a juvenile-family crisis, shall be strictly safeguarded
from public inspection. Such records shall be made
available only to:

- (1) Any court or probation department;
- (2) The Attorney General or county prosecutor;
- (3) The parents or guardian and to the attorney of the
juvenile;
- (4) The Division of Youth and Family Services, if
providing care or custody of the juvenile;
- (5) Any institution to which the juvenile is currently
committed; and
- (6) Any person or agency interested in a case or in
the work of the agency keeping the records, by order of
the court for good cause shown.

b. Records of law enforcement agencies may be
disclosed for law enforcement purposes to any law
enforcement agency of this State, another state or the
United States, and the identity of a juvenile under
warrant for arrest for commission of an act that would
constitute a crime if committed by an adult may be
disclosed to the public when necessary to execution of
the warrant.

c. [Information] At the time of charge, adjudication
or disposition, information as to the identity of a
juvenile charged with an offense, the offense charged,
the adjudication and disposition shall, upon request, be
disclosed to:

- (1) The victim or a member of the victim's immediate
family;

EXPLANATION--Matter enclosed in bold-faced brackets [thus]
in the above bill is not enacted and is intended to be omitted in
the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted
as follows:

- 1 Senate SJU committee amendments adopted May 5, 1994.
- 2 Assembly floor amendments adopted June 20, 1994.

(2) Any law enforcement agency which investigated the offense, the person or agency which filed the complaint, and any law enforcement agency in the municipality where the juvenile resides; and

(3) On a confidential basis, the principal of the school where the juvenile is enrolled for use by the principal [or his designee in] and such members of the staff and faculty of the school as the principal deems appropriate for maintaining order, safety or discipline in the school or to planning programs relevant to the juvenile's educational and social development, [which information shall not become part of the juvenile's permanent school records] provided that no record of such information shall be maintained except as authorized by regulation of the Department of Education; or

(4) A party in a subsequent legal proceeding involving the juvenile, [but only] upon approval by the court [and for the sole purpose of impeaching the juvenile as a witness].

d. A law enforcement or prosecuting agency shall, at the time of a charge, adjudication or disposition, advise the principal of the school where the juvenile is enrolled of the identity of the juvenile charged, the offense charged, the adjudication and the disposition if:

(1) The offense occurred on school property or a school bus, occurred at a school-sponsored function or was committed against an employee or official of the school; or

(2) The juvenile was taken into custody as a result of information or evidence provided by school officials; or

(3) The offense, if committed by an adult, would constitute a crime, and the offense:

(a) resulted in death or serious bodily injury or involved an attempt or conspiracy to cause death or serious bodily injury; or

(b) involved the unlawful use or possession of a firearm or other weapon; or

(c) involved the unlawful manufacture, distribution or possession with intent to distribute a controlled dangerous substance or controlled substance analog; or

(d) was committed by a juvenile who acted with a purpose to intimidate an individual or group of individuals because of race, color, religion, sexual orientation or ethnicity; or

(e) would be a crime of the first or second degree.

Information provided to the principal pursuant to this subsection shall be treated as confidential but may be made available to such members of the staff and faculty of the school as the principal deems appropriate for maintaining order, safety or discipline in the school or for planning programs relevant to a juvenile's educational and social development, and no record of such information shall be maintained except as authorized by regulation of the Department of Education.

e. Nothing in this section prohibits a law enforcement or prosecuting agency from providing the principal of a school with information identifying one or more juveniles who are under investigation or have been taken into custody for commission of any act that would constitute an offense if committed by an adult when the law enforcement or prosecuting agency determines that the information may be useful to the principal in maintaining order, safety or discipline in the school or in planning programs relevant to the juvenile's educational and social development. Information provided to the principal pursuant to this subsection shall be treated as confidential but may be made available to such members of the staff and faculty of the school as the principal deems appropriate for maintaining order, safety or discipline in

the school or for planning programs relevant to the juvenile's educational and social development. No information provided pursuant to this section shall be maintained.

[d.] There shall be a presumption that information] f. Information as to the identity of a juvenile adjudicated delinquent, the offense, the adjudication and the disposition shall be disclosed to the public where the offense for which the juvenile has been adjudicated delinquent if committed by an adult, would constitute a crime of the first, second or third degree, or aggravated assault, destruction or damage to property to an extent of more than \$500.00 [or the manufacture or distribution of a narcotic drug], unless upon application at the time of disposition the juvenile [can demonstrate] demonstrates a substantial likelihood that specific and extraordinary harm would result from such disclosure in the specific case. Where the court finds that disclosure would be harmful to the juvenile, the reasons therefor shall be stated on the record.

[e.] g. Nothing in this section shall prohibit the establishment and maintaining of a central registry of the records of law enforcement agencies relating to juveniles for the purpose of exchange between State or local law enforcement agencies of this State, another state, or the United States.

[f.] h. Whoever, except as provided by law, knowingly discloses, publishes, receives, or makes use of or knowingly permits the unauthorized use of information concerning a particular juvenile derived from records listed in subsection a. or acquired in the course of court proceedings, probation, or police duties, shall, upon conviction thereof, be guilty of a disorderly persons offense.

[g.] i. The court may, upon application by the juvenile or his parent or guardian, the prosecutor or any other interested party, including the victim or complainant or members of the news media, permit public attendance during any court proceeding at a delinquency case, where it determines that a substantial likelihood that specific harm to the juvenile would not result, and 2[. upon application,]2 the court shall permit a victim, or a family member of a victim 2f, who has filed a statement pursuant to subsection c. of section 23 of P.L.1982, c.77 (C.2A:4A-42)]2 to make a statement prior to ordering a disposition in any delinquency proceeding involving an offense that would constitute a crime if committed by an adult. The court shall have the authority to limit and control the attendance in any manner and to the extent it deems appropriate.

1. The Department of Education, in consultation with the Attorney General, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations concerning the creation, maintenance and disclosure of pupil records including information acquired pursuant to this section. (cf: P.L.1982, c.79, s.1)

2. Section 2 of P.L.1982, c.79 (C.2A:4A-61) is amended to read as follows:

2. Fingerprint records; photographs of juveniles.

a. Fingerprints of a juvenile may be taken only in the following circumstances:

(1) Where latent fingerprints are found during the investigation of an offense and a law enforcement officer has reason to believe that they are those of a juvenile, he may, with the consent of the court or juvenile and his parent or guardian fingerprint the juvenile for the purpose of comparison with the latent fingerprints. Fingerprint records taken pursuant to this paragraph may

be retained by the department or agency taking them and shall be destroyed when the purpose for the taking of fingerprints has been fulfilled.

(2) Where a juvenile is detained in or committed to an institution, that institution may fingerprint the juvenile for the purpose of identification. Fingerprint records taken pursuant to this paragraph may be retained by the institution taking them and shall be destroyed when the purpose for taking them has been fulfilled, except that if the juvenile was detained or committed as the result of an adjudication of delinquency, the fingerprint records may be retained by the institution.

(3) Where a juvenile 14 years of age or older is charged with delinquency on the basis of an act which, if committed by an adult, would constitute a crime, fingerprint records taken pursuant to this paragraph may be retained by a law enforcement agency for criminal identification purposes.

b. No juvenile under the age of 14 shall be photographed for criminal identification purposes without the consent of the court or of the juvenile and his parent or guardian.

c. Fingerprints of a juvenile shall be taken if the juvenile is 14 years of age or older and is adjudicated delinquent on the basis of an act which, if committed by an adult, would constitute a crime.

d. Fingerprints taken pursuant to subsection c. of this section shall be taken according to the fingerprint system of identification established by the Superintendent of State Police on the forms prescribed and shall be forwarded without delay to the State Bureau of Identification together with such information concerning the juvenile and the adjudication as the Superintendent may require. The State Bureau of Identification shall retain records received pursuant to this subsection for the sole purpose of exchange between State or local law enforcement agencies of this State, and law enforcement agencies of another state or the United States.

(cf: P.L.1982, c.79, s.2)

3. Section 3 of P.L.1982, c.79 (C.2A:4A-62) is amended to read as follows:

3. Sealing of records.

a. On motion of a person who has been the subject of a complaint filed under this act or on its own motion, the court may vacate its order and findings and order the nondisclosure of social, medical, psychological, legal and other records of the court and probation services, and records of law enforcement agencies if it finds:

(1) Two years have elapsed since the final discharge of the person from legal custody or supervision, or 2 years have elapsed after the entry of any other court order not involving custody or supervision; and

(2) He has not been convicted of a crime, or a disorderly persons offense or adjudged delinquent, during the 2 years prior to the filing of the motion, and no proceeding or complaint is pending seeking such conviction or adjudication.

b. In any case wherein a juvenile has been adjudicated delinquent and said juvenile enlists in any branch of the Armed Forces of the United States, he may at any time after the date of such adjudication present a duly verified petition to the court where such adjudication was entered, setting forth all the facts in the matter, including proof of enlistment and acceptance in said armed forces, and praying for the relief provided in this section, and subject to the limitations hereinafter provided in this section, an order may be granted to seal all the records concerning such adjudication including

records of the court, probation services and law enforcement agencies. Failure to enter the armed forces shall have the effect of nullifying the sealing order.

c. Reasonable written notice of the motion shall be given to:

(1) The Attorney General and the county prosecutor;
(2) The authority granting the discharge if the final discharge was from an institution, parole, or probation;
and

(3) The law enforcement office, department, and central depository having custody of the files and records if such files and records are included in the motion.

d. Upon the entry of the order, the proceedings in the case shall be sealed and all index references shall be marked "not available" or "no record" and law enforcement officers and departments shall reply and the person may reply to any inquiry that there is no record with respect to such person, except that records may be maintained for purposes of prior offender status, identification and law enforcement purposes. [This section shall not apply to reports required under the Controlled Dangerous Substances Registry Act of 1970, P.L.1970, c.227 (C.26:2G-17 et seq.).] Copies of the order shall be sent to each agency or official named therein.

Inspection of the files and records included in the order may thereafter be permitted by the court only upon motion and only to those persons named in the motion; provided, however, the court, in its discretion, may by special order in an individual case permit inspection by or release of information in the records to any clinic, hospital, or agency which has the person under care or treatment or to individuals or agencies engaged in fact-finding or research.

e. Any adjudication of delinquency or conviction of a crime subsequent to sealing shall have the effect of nullifying the sealing order.

f. Expungement of juvenile records shall be governed by the applicable provisions of chapter 52 of Title 2C of the New Jersey Statutes.

(cf: P.L.1982, c.79, s.3)

4. R.S.53:1-15 is amended to read as follows:

53:1-15. The sheriffs, chiefs of police, members of the State Police and any other law enforcement agencies and officers shall, immediately upon the arrest of any person for an indictable offense, or of any person believed to be wanted for an indictable offense, or believed to be an habitual criminal, or within a reasonable time after the filing of a complaint by a law enforcement officer charging any person with an indictable offense, or upon the arrest of any person for shoplifting, pursuant to N.J.S.2C:20-11, or the conviction of any other person charged with a nonindictable offense, where the identity of the person charged is in question, take the fingerprints of such person, according to the fingerprint system of identification established by the Superintendent of State Police and on the forms prescribed, and forward without delay two copies or more of the same, together with photographs and such other descriptions as may be required and with a history of the offense committed, to the State Bureau of Identification.

Such sheriffs, chiefs of police, members of the State Police and any other law enforcement agencies and officers shall also take the fingerprints, descriptions and such other information as may be required of unknown dead persons and as required by section 2 of P.L.1982, c.79 (C.2A:4A-61) of juveniles adjudicated delinquent and shall forward same to the State Bureau of Identification.

Any person charged in a complaint filed by a law enforcement officer with an indictable offense, who has not been arrested, or any person charged in an indictment, who has not been arrested, shall submit himself to the identification procedures provided herein either on the date of any court appearance or upon written request of the appropriate law enforcement agency within a reasonable time after the filing of the complaint. Any person who refuses to submit to such identification procedures shall be a disorderly person. (cf: P.L.1982, c.219, s.1)

5. Section 1 of P.L.1985, c.69 (C.53:1-20.5) is amended to read as follows:

1. As used in this act:

a. "Processing criminal history record background checks" means the process whereby the State Bureau of Identification compares a set of fingerprints or name search request with those in its files for a determination as to the criminal history of the person identified by the request.

b. "Noncriminal matter" means any matter, other than the arrest of a person for an indictable offense or other criminal justice purpose, which requires the submission of a person's fingerprints or name search request to the State Bureau of Identification for processing. These matters include background investigations for licensing or employment, or both.

c. For purposes of this section, the criminal history record of a person does not include records concerning charges or adjudications of juvenile delinquency. Such records shall be disclosed only as provided in section 1 of P.L.1982, c.79 (C.2A:4A-60).
(cf: P.L.1985, c.69, s.1)

6. (New section) The State Board of Education, in consultation and cooperation with the Attorney General, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) rules and regulations regarding law enforcement activities on school grounds and the reporting of suspected offenses and acts of delinquency to law enforcement.

7. This act shall take effect immediately.

Increases public access to information related to juvenile justice system.